

DEPARTMENT OF STATE REVENUE

04-20200429.MOD; 04-20200430.MOD;
04-20200431.MOD; 04-20200432.MOD;
04-20200433.MOD

Memorandum of Decision:
04-20200429, 04-20200430, 04-20200431, 04-20200432, 04-20200433
Sales & Use Tax
For the Tax Years 2016 and 2017

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Memorandum of Decision.

HOLDING

Company is entitled to its claim for refunds regarding its exemption for tangible personal property used in the provision of internet service to the extent that the invoices are applicable to the assessment at issue.

ISSUE**I. Sales Tax - Documentation.**

Authority: IC § 6-8.1-9-1; *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); IC § 6-8.1-5-1; IC § 6-2.5-3-2; IC § 6-2.5-5-13; *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, (Ind. 2014); [45 IAC 2.2-3-14](#).

Taxpayer protests the denial of its refund claim.

STATEMENT OF FACTS

Taxpayer is an Indiana information technology provider that supplies internet and runs fiber optic cables in local counties. Taxpayer filed a GA-110L claiming a refund for equipment it believed to be exempt from Indiana gross retail tax. The Department denied the claim for refund and Taxpayer protested that denial. The Department conducted a hearing and this Memorandum of Decision results. Additional facts will be provided as necessary.

I. Sales Tax - Documentation.**DISCUSSION**

Taxpayer claims it improperly paid sales tax on items bought in 2016 and 2017 which Taxpayer used to provide internet services to customers. Taxpayer filed GA-110Ls on December 31, 2019, for periods including January-April 2016, June-September 2016, October- December 2016, and May 2017. The Department contacted Taxpayer in May 2020 to obtain supporting documentation. On August 31, 2020, the Department denied Taxpayer's claim for refund stating that "No Response received before deadline."

"[W]hen [courts] examine a statute that an agency is 'charged with enforcing. . .[courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision shall be entitled to deference.

Sales tax is imposed by IC § 6-2.5-2-1, which states:

- (a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.
- (b) The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state.

Per IC § 6-2.5-5-13, Transactions involving tangible personal property are exempt from the state gross retail tax, if:

(1) the property is:

(A) classified as central office equipment, station equipment or apparatus, station connection, wiring, or large private branch exchanges according to the uniform system of accounts which was adopted and prescribed for the utility by the Indiana utility regulatory commission;

(B) mobile telecommunications switching office equipment, radio or microwave transmitting or receiving equipment, including, without limitation, towers, antennae, and property that perform a function similar to the function performed by any of the property described in clause (A); or

(C) a part of a national, regional, or local headend or similar facility operated by a person furnishing video services, cable radio services, satellite television or radio services, or Internet access services; and

(2) the person acquiring the property:

(A) furnishes or sells intrastate telecommunication service in a retail transaction described in [IC 6-2.5-4-6](#); or

(B) uses the property to furnish:

(i) video services or Internet access services; or

(ii) VOIP services.

Additionally, IC § 6-10-1-5 provides that neither Indiana nor a political subdivision of the state may impose, assess, collect, or attempt to collect a tax on Internet access or the use of Internet access.

The Indiana Code provides guidance on filing a refund claim. IC § 6-8.1-9-1(a) provides:

If a person has paid more tax than the person determines is legally due for a particular taxable period, the person may file a claim for a refund with the department. . . in order to obtain the refund, the person must file the claim with the department within three (3) years after the latter of the following:

(1) The due date of the return.

(2) The date of payment. . .

Taxpayer provided documentation including invoices and receipts of various types of equipment purchased during the periods in question. According to IC § 6-2.5-5-13(1)(C), "transactions involving tangible personal property are exempt from the state gross retail tax, if a part of a national, regional, or local headend or similar facility operated by a person furnishing Internet access services." Additionally, Taxpayer acquired the property to furnish Internet access services. IC § 6-2.5-5-13(2)(B). The documentation provided established that purchased equipment was related to providing Internet access services to residents in Indiana. Thus, Taxpayer's purchases are exempt under IC § 6-2.5-5-13 and IC § 6-10-1-5.

Because these were purchases as a customer and not sales as a retail merchant, the three-year deadline for filing a claim for refund runs from the end of the year in which the transaction occurred, as provided under IC § 6-8.1-9-1(a). Therefore, since the refund claims were timely filed, the Department will review the documentation supplied in the protest process and will adjust the assessments to reflect the verified and relevant invoices.

FINDING

Taxpayer is sustained to the extent described above.

July 2, 2021

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